

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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|---|---|-------------------------|
| In re |) | |
| |) | |
| MARITIME COMMUNICATIONS/LAND MOBILE, LLC |) | EB Docket No. 11-71 |
| |) | File No. EB-09-01-1751 |
| Participation in Auction No. 61 and Licensee |) | FRN: 001358779 |
| Of Various Authorizations in the Wireless |) | |
| Radio Services |) | |
| |) | |
| Applicant for Modification of Various |) | App. FNs 0004030479, |
| Authorizations in the Wireless Radio Services |) | 0004144435, 0004193028, |
| Applicant with ENCANA OIL AND GAS |) | 0004193328, 0004354053, |
| (USA), INC.; DUQUESNE LIGHT |) | 0004309872, 0004310060, |
| COPANY; DCP MIDSTREAM, LP; |) | 0004314903, 0004315013, |
| JACKSON COUNTY RURAL, |) | 0004430505, 0004417199, |
| MEMBERSHIP ELECTRIC |) | 0004419431, 0004422320, |
| COOPERATIVE; PUGET SOUND |) | 0004422329, 0004507921, |
| ENERGY, INC.; INTERSTATE |) | 0004153701, 0004526264, |
| POWER AND LIGHT COMPANY; |) | 0004636537, 0004604962. |
| WISCONSIN POWER AND LIGHT |) | |
| COMPANY; DIXIE ELECTRIC |) | |
| MEMBERSHIP CORPORATION, INC.; |) | |
| ATLAS PIPELINE – MID CONTINENT, |) | |
| LLC; DENTON COUNTRY ELECTRIC |) | |
| COOPERATIVE, INC., DBA COSERV |) | |
| ELECTRIC; AND SOUTHERN |) | |
| CALIFORNIA REGIONAL RAIL |) | |
| AUTHORITY |) | |

To: Marlene H. Dorch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

Opposition to Motion for Summary Decision, [Errata Copy](#)^[*]

Warren Havens (“Havens”) files this opposition to the motion for summary decision by Maritime (also known as “MCLM”) regarding certain “issue (g)” matters (the “MSD”).

In addition, Havens files this conditionally, as a protective filing, on behalf of and as representative and non-attorney counsel to the SkyTel legal entities listed on the signature page (“SkyTel-E,” meaning any one, several, or all of these entities). Both Havens and SkyTel-E recognize the Judge’s recent Orders, including M-13M-11 (“M-11”), that order Mr. Havens to

^[*] As compared to the original, herein additions are in blue text and deletions in strikeout. A few formatting changes are also made (spacing of items, and the like).

retain legal counsel for the SkyTel-E entities, and filing in this manner is not intended to be in disregard of those orders. However, because Havens and SkyTel-E filed yesterday, May 22, 2013, a timely Appeal under Rule §1.301(a) yesterday of that and related matters (the substance of which is referenced and incorporated herein), this opposition is conditionally crafted to preserve the issues on appeal while simultaneously allowing for both Havens' and SkyTel-E's opposition to MCLM's MSD to be noted, in case the Appeal is granted or in case for any other reason the Commission or the Judge later find that Havens can represent SkyTel-E in this Hearing. In any such case, SkyTel-E desires that the instant Opposition be considered on their behalf, and hereby makes that request.

Herein, "EB" means the Enforcement Bureau, "WB" means the Wireless Bureau, "Judge" means Judge Sippel, "SkyTel-E" means the legal-entity companies with Havens as President that were designated by the Commission in the HDO as parties (excepting one that may file a separate Opposition to the MSD today), in addition to Havens, "HDO" means the Hearing Designation Order FCC 11-64, "Hearing" means the instant hearing in docket 11-71, "Applicants" means any or all of the applicants listed in the caption above (in assignment applications), and "Keller" means Robert Keller, counsel for MCLM. Unless otherwise stated, a MCLM "license" and "station" each mean herein a site-based license and component station (each license has multiple stations, each at one site). Other terms may be defined below. Terms used herein not defined herein have the meanings given to them in relevant FCC law and orders.

The filers intend to complete this filing and submit the completed filing with a request to accept. However, the critical evidence to the contrary of fact alleged by MCLM in support of the MSD are, however, presented with this filing on May 22, 2013, along with the essential reasons that this evidence, and related arguments, support denial of the MSD.

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| III | The MSD fails, including since there are facts of decisional importance in dispute, Maritime has withheld essential evidence including by apparent fraud, and the Judge has not decided on the Glossary as to relevant law. | |
| | <i>Threshold issues--</i> | |
| | 1 Lack of required sworn statement of facts asserted. The person with key evidence, David Predmore, testifies to the contrary. | |
| | 2 Maritime withheld evidence, and apparent fraud and perjury in doing so, which defeats any MSD attempt. Maritime attorneys are aware of and facilitate these violations. | |
| | 3 Lack of legal basis: the Judge has not decided on the required Glossary. | |
| | 4 This MSD attempt is the fifth concurrent attempt by Maritime to escape facing of facts and law as to clear reasons to find both automatic termination, and revocation, of the licenses. | |
| | 5 Pending proceedings by SkyTel-E against MCLM and Mobex before the FCC demonstrate compelling reasons why the Mobex licenses and stations are subject to both termination, prior to the sale and assignment to Maritime, and to revocation for effectively admitted extensive fraud in the Wireless Bureau's year 2004 "audit." These challenges under 47 USC §309(d) and 405 cannot be trumped by the subject MSD. | |
| | <i>Regarding "Operations" --</i> | |
| | 6 EB is essentially correct regarding permanent discontinuance--lack of required "operation" and service-- and additional facts and law on this prong of the MSD. (EB is not correct as to other matters in the MSD.) | |
| | 7 The Maritime-Choctaw Chapter 11 Plan reveals facts that show there is no legal commitment to use the licenses for operations and service, a fact the undercuts MSD premises and purpose of licensing. | |
| | 8 "Operation" requires coverage which the licenses never had, and Interconnected service which Maritime admits the licenses did not have. | |
| | <i>Regarding "Construction" --</i> | |
| | 9 Attached memo on the meaning of "Construction," and related operations and service, under relevant rules and orders. | |

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|----|--------------------------|----|--|--|
| | | 10 | Evidence shows lack of timely construction | |
| | | 11 | Effective admission of lack of timely construction | |
| | | 12 | Evidence that MCLM bought Mobex licenses that had already terminated for discontinuance, and non construction | |
| | | 13 | Evidence that MCLM bought the Mobex licenses recognizing their invalidity to keep, but usefulness for unlawful blocking of competition commencing in Auction 61 (creating a dispute of fact as to the MSD) | |
| | | 14 | “Construction” requires coverage which the licenses never had, and Interconnected service which Maritime admits the licenses did not use. | |
| | | | | |
| IV | Other Procedural matters | | | |
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Exhibits *

- 1.0 Predmore deposition transcript
- 2.1 Predmore documents produced, part 1
- 2.2 Predmore documents produced, part 2
- 3.0 Predmore Declaration used by MCLM before FCC, and in this Hearing
- 4.0 Some of MCLM counsel standing by Predmore Declaration, and that MCLM does not have or know of the Mobex license records.
- 5.0 Certain FCC FOIA responses, re MCLM incld as to Predmore, Reardon
- 6.0 MCLM-S.Depriest to EB, incld Ex 5, MCLM -Mobex licenses purchase agrmt (shows MCLM fraud as to not getting Mobex records)
- 7.0 []
- 8.0 Chen memo on 'construction' and 'operation-service' etc
- 9.1 FCC_1st_audit
- 9.2 FCC_2nd_audit
- 10.0 Mobex Form 499-A 2003-2006 no operations some States
- 11.0 Mobex UCC filing with Ericsson, re License Holders
- 12.0 80.475(a) (1999) Recon 1.41 Rqst auto termination lack construct-coverage
- 13.0 []
- 14.0 Choctaw as agent and co-controller of MCLM licenses after Bankruptcy Ct approval of Ch 11 Plan. (Uploaded with this Errarta copy.)**
- 21, 22, 23 As described in the text
- 30 Havens email to EB and OIG re MCLM and Predmore evidence

* Exhibits are PDF files, [searchable](#) for key terms re issues described in this Opposition’s text.

** The substance is from preexisting MCLM bankruptcy case documents on PACER, and the FCC and MCLM are parties to the case. Filers ask that the Judge accept this Exhibit 20, filed on May 23, for a more full and complete record.

I. Introduction and Summary

The detailed contents subsection descriptions provide an introduction and summary.

II. Issue (g) underlies all other Hearing issues, including lack of character and fitness and thus to revocation of all licenses, site-based and geographic.

Initially, while issue G does not appear to address fraud on its face, the issues of fraud present in this proceeding necessarily create an issue of fact by preventing access to documents that would shed light on what the true facts actually are, making ~~SJ~~ [summary decision](#) inappropriate. Until it can be determined what these documents that Predmore discusses can be determined ([the facts and factual denials in them, the support, etc.](#)), material issues of fact will continue to exist for all issues that were designated for hearing.

III. The MSD fails, including since there are facts of decisional importance in dispute, Maritime has withheld essential evidence including by apparent fraud, and the Judge has not decided on the Glossary as to relevant law.

See the exhibits hereto, including those involving Mr. Predmore. Also see the email to the EB that describes some of this evidence: Exhibit 30.

Threshold issues (under Part III)

(III) 1. Lack of required sworn statement of facts asserted.
The person with key evidence, David Predmore, testifies to the contrary.

This is clear in the MSD, in comparison to the many exhibits hereto regarding Mr. Predmore.

(III) 2. Maritime withheld evidence, and apparent fraud
and perjury in doing so, which defeats any MSD attempt.
Maritime attorneys are aware of and facilitate these violations.

This is clear in the MSD, in comparison to the many exhibits hereto regarding Mr. Predmore, including Exhibit 30.

(III) 3. Lack of legal basis:
the Judge has not decided on the required Glossary.

The judge required MCLM, the EB and Havens to submit to him pleadings with a “Glossary” to be the basis of decisions on issue (g). The Judge has not ruled on the Glossary matter, and also there were disputes on this matter between MCLM, EB and Havens. Thus, the MSD is premature and should be dismissed, until the Judge rules on the Glossary.

(III) 4. This MSD attempt is the fifth concurrent attempt
by Maritime to escape facing of facts and law as to clear reasons
to find both automatic termination, and revocation, of the licenses.

The other attempts include MCLM oppositions in: the SkyTel entities (with Havens) application for review pending before the Commission (which includes “issue (g)” matters) filed against the MCLM Long form in Auction 61, the Skytel-Havens pending petitions for reconsideration with new facts, challenging said Long Form (also involving said issue (g) matters), the SkyTel-Havens pending challenge to the MCLM renewal of its Atlantic Coast site-based stations license (which the WB instructed will proceed outside of this Hearing) and the SkyTel-Havens challenge to the MCLM site based licenses and stations based on rule 80.475(a) (1999) which the EB also stated will proceed outside of this Hearing (see Exhibit 12). MCLM cannot properly submit and have granted the subject MSD while these other proceedings, dealing with the same matters, are also proceeding. Most of these others commenced before this Hearing, and include matters pending before the full Commission.

(III) 5. Pending proceedings by SkTel-E against MCLM and Mobex before the FCC
demonstrate compelling reasons why the Mobex licenses and stations are subject to
both termination, prior to the sale and assignment to Maritime, and to revocation for
effectively admitted extensive fraud in the Wireless Bureau’s year 2004 “audit.”
These challenges under 47 USC §309(d) and 405 cannot be trumped by the subject MSD.

Regarding “Operations” (under Part III)

(III) 6. EB is essentially correct regarding permanent discontinuance -- lack of required “operation” and service -- and additional facts and law on this prong of the MSD. (EB is not correct as to other matters in the MSD.)

This heading is clear. We will add additional text in a supplement.

(III) 7. The Maritime-Choctaw Chapter 11 Plan reveals facts that show there is no legal commitment to use the licenses for operations and service, and Choctaw co-control, a fact that that undercuts MSD premises and purpose of licensing.

See exhibit ~~20~~ 14.

(III) 8. “Operation” requires coverage which the licenses never had, and Interconnected service which Maritime admits the licenses did not have.

See exhibit 12 and exhibit 8 (lack of coverage) and exhibit 10 (lack of interconnection).

Regarding “Construction” (under Part III)

(III) 9. Attached memo on the meaning of “Construction,” and related operations and service, under relevant rules and orders.

Initially, these evidentiary issues, and the lack of agreement on how “construction” is to be defined, require a finding by the ALJ that a material issue of fact exists for all licenses, including the non-Watercom licenses and all Watercom licenses, not just KAE889, WRV374 and WHG693. See exhibit 8.0 to be read with the other parts of this pleading.

(III) 10. Evidence shows lack of timely construction

The activation notices are admissions of non construction by a facial reading, and there were not subsequent filings by MCLM predecessors as to actual timely “construction” (as that term means, or any timely construction).

(III) 11. Effective admission of lack of timely construction

See preceding section.

(III) 12. Evidence that MCLM bought Mobex licenses that had already terminated for discontinuance, and non construction

This is shown in the exhibits involving Mr. Predmore.

(III) 13. Evidence that MCLM bought the Mobex licenses recognizing their invalidity to keep, but usefulness for unlawful blocking of competition commencing in Auction 61 (creating a dispute of fact as to the MSD)

This is shown in the exhibits regarding Mr. Predmore, including exhibit 30.

(III) 14. “Construction” requires coverage which the licenses never had, and Interconnected service which Maritime admits the licenses did not use.

See exhibit 12 and exhibit 8 (lack of coverage) and exhibit 10 (lack of interconnection).

IV. Other matters

Regarding Exhibits 21, 22, 23: See the text box notes on them and highlights of certain relevant information that supports this opposition. These exhibits consist of a Spectrum Bridge prospectus for the MCLM AMTS spectrum, including site-based spectrum; a Spectrum Bridge Fair Market Valuation for SCRRRA regarding the MCLM AMTS spectrum, including site-based spectrum; and MCLM's report to the ALJ in which it admits that it has not operated any of its stations since December 2007. These exhibits show, among other things, that the MCLM site-based AMTS licenses ceased operations and have been dormant since they were owned by Mobex and Watercom, and that MCLM acquired the site-based licenses when they were already invalid for the purpose of reducing competition at AMTS Auction 61 in order to obtain the geographic licenses at a lower price.

V. Conclusion

The MSD should be denied.

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Respectfully submitted,

/s/

Warren Havens, an individual party

/s/ [◇]

Warren Havens, as President of each of:
The “SkyTel-E” entities, individually, and in this filing
together:
Skybridge Spectrum Foundation (“SSF”)
V2G LLC
Environmental LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC

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Dated: May 22, 2013

[◇] See commencement of this pleading as to the protective, conditional submission of this pleading by the SkyTel-E entities.

[*] A copy ~~copy~~ should also be provided to Jimmy Stobaugh of any email to Havens on matters of this filing. jstobaugh@telesaurus.com

[*] A copy should also be provided to Jimmy Stobaugh (General Manager of each SkyTel-E LLC, and assistant in the SSF) of any email on matters of this filing. jstobaugh@telesaurus.com

Declaration

I declare under penalty of perjury that the factual assertions and denials in the preceding Opposition are true and correct.

/s/

Warren Havens

CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 22, 2013, I caused a true copy of the foregoing “Opposition” filing in FCC docket 11-71 to be served by USPS first class mail (with courtesy email copies, using emails of record) to:

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/s/

Warren Havens

The **Errata copy** filed on ECFS on May 23, 2013: It is served on same date, as described above.

/s/

Warren Havens